

**MINUTES
of the
SIXTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 30-December 2, 2015
State Capitol, Room 322
Santa Fe**

The sixth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on November 30, 2015 at 9:44 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes
Rep. Gail Chasey (11/30, 12/2)
Rep. Jim Dines (12/2)
Rep. Rick Little
Sen. Linda M. Lopez
Rep. Antonio Maestas (11/30, 12/2)
Sen. Cisco McSorley
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Sander Rue

Absent

Rep. Georgene Louis
Sen. Lisa Torracco

Advisory Members

Sen. Jacob R. Candelaria
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco (12/2)
Sen. John Pinto
Rep. Patricia Roybal Caballero (12/1, 12/2)
Rep. Patricio Ruiloba (12/1, 12/2)
Sen. Mimi Stewart
Sen. Peter Wirth

Sen. Craig W. Brandt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Christine Trujillo

Guest Legislators

Rep. Jimmie C. Hall (12/1, 12/2)
Rep. Monica Youngblood (12/1)

(Attendance dates are noted for members not present for the entire meeting.)

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS
Celia Ludi, Staff Attorney, LCS
Shawna Casebier, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Nancy Martinez, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, November 30

Senator Martinez welcomed members of the committee and the audience to the meeting, and committee members introduced themselves.

Election Reform Legislation: Campaign Finance Disclosure and Changes to the Voter Action Act

Senator Wirth introduced two election reform bills for the committee's consideration.

The first bill, which revises the Campaign Reporting Act, addresses campaign finance disclosures and revises provisions of law that were rendered unconstitutional following decisions by the United States Supreme Court and the Tenth Circuit Court of Appeals.

The bill provides: a definition for "coordinating" in the context of an independent expenditure committee working with a candidate; certain increased contribution limits; clarification on when disclosures are required by entities that expressly advocate and that educate voters within established 30- and 60-day time frames; and a delayed effective date of November 9, 2016 to allow for the current election cycle to end before the law takes effect. Senator Wirth noted that the Secretary of State's Office (SOS) has been working on the issues represented in the legislation.

Jon Boller, staff attorney, LCS, said that the bill creates two categories with respect to independent expenditure committees: one for political committees and one for organizations whose campaign spending is below a certain threshold.

In response to a member's question, Senator Wirth recalled the progress of the bill during previous legislative sessions. He said that the bill has passed the senate twice but has encountered obstacles despite the fact that the language in the bill mirrors existing federal law. He added that the bill he presented is the version of the bill that was passed by the House Judiciary Committee during the 2015 session, except that the delayed effective date has been added. Mr. Boller added that he made some stylistic changes to Section 12 of the bill.

A member suggested that the use of a graphic to show relevant time triggers contained in the bill would be helpful. The member also thanked the SOS for its work on the issue and for delaying rulemaking on the issue to allow for a possible legislative solution to be developed.

In response to a member's question about the applicability of the bill's reporting provisions, Senator Wirth said that the requirements relate to all nonprofit organizations that are campaigning or educating voters during relevant time periods. He added that the bill has received unanimous support in the senate in part because of its equal treatment of those organizations.

A member asked for clarification about the definition of "coordinated expenditure". Mr. Boller and Senator Wirth explained that the definition helps clarify whether a certain activity qualifies as "coordinating" and said that the reporting provisions are triggered only when "coordination" is present.

Kari Fresquez, state elections director, SOS, introduced Amy Bailey, SOS general counsel; Mandy Vigil, manager of the SOS Ethics Division and deputy election director. Ms. Fresquez said that she worked with Senator Wirth on the issues presented in the bill. The current law is difficult to administer because it is outdated and includes unconstitutional provisions. The SOS supports changes to the law that provide clarity and ease of administration, and she added that Senator Wirth's bill resolves some of those issues and the current SOS administration supports the legislation.

In response to a member's question, Ms. Fresquez said that it would be difficult to report information about certain entities that participate in campaign activities, but that are not required to register with the SOS. Because independent expenditure committees voluntarily report to the SOS, enforcing compliance could be problematic. Historically, when the SOS confirms a failure to comply with reporting requirements, the SOS will refer the case to the Attorney General's Office (AGO).

Senator Wirth presented a second bill that includes revisions to the Voter Action Act and addresses issues related to publicly financed candidates. He recalled that the bill passed the

legislature in the 2013 session but was vetoed by the governor and then passed the senate during the 2015 session. Among other provisions, the bill provides restrictions on the use of public campaign funds, details related to candidates who run in uncontested elections and provisions related to matching funds.

A member suggested that the bill be revised to explicitly restrict the use of public campaign funds for living expenses of candidates, their family members and other persons who reside with a candidate.

Ms. Fresquez said that the SOS has not taken a position on the bill.

A member suggested that the public financing provisions in law should be changed to allow a person to opt out of publicly financing the person's campaign even if the person initially chose that option.

A member emphasized that the legislature and legislative leadership will have to make the bill a priority in order for it to pass in time for the end of the current election cycle.

Report on In-House Parole

Judith Rosenstein, president of the board of directors for the New Mexico Women's Justice Project, presented the results of a study of the use of "in-house parole", which is the practice of keeping inmates incarcerated during their parole period. She said that in-house parole is used in some instances because inmates' parole plans are not approved by the time an inmate is eligible for release. Insufficient staffing contributes to the delay in preparation of parole plans. Ms. Rosenstein noted that the Legislative Finance Committee (LFC) estimated that delayed parole release cost the state \$10.3 million in fiscal year (FY) 2014.

Marcia Wilson explained the differences between probation and parole. Both periods are imposed by a judge and are supervised by Corrections Department (CD) probation and parole officers. When a person violates the terms of his or her probation, a judge hears the matter; however, parole is administered by the Adult Parole Board and the CD. Ms. Wilson explained that the report on in-house parole served by female inmates was prepared using documents from the CD, which included case managers' notes about every woman in the states' prisons who served in-house parole during 2014.

Ms. Rosenstein said that there are similar concerns with in-house parole served by male inmates. She expressed concerns with the use of in-house parole, particularly in privately run prisons that may have a financial incentive to maintain higher inmate populations. She added that the state has not contracted with the Corrections Corporation of America to operate the women's correctional facility in Grants and that the facility will instead be run by the CD.

Ms. Rosenstein informed the committee that the function of parole is to help an inmate's transition from incarceration to life outside a facility. If a woman serves her entire period of

parole inside a facility, upon release she will have no supervision and no assistance with supportive services. Ms. Wilson noted that public health concerns, such as alcohol and substance use addiction, are present among a majority of incarcerated women, and it is important that inmates have access to services when they are released.

A member suggested that the CD should be required to release inmates when they are eligible for parole. The current statute provides that it is permitted, but not required, that the CD release inmates who become eligible for parole.

A member noted that New Mexico is among a minority of states that administer probation through the executive branch. In most states, probation is administered through the judicial branch.

In response to a member's question, Sherry Stevens, director, Adult Parole Board, said that the board has requested additional funding for the coming fiscal year for parole hearings at the Grants women's facility. Rose Bobchak, director of probation and parole for the CD, added that the CD will provide information to the CCJ about fiscal needs that relate to in-house parole.

Ms. Wilson noted that the LFC reported that 78% of incarcerated women were released on time; however, it is not clear whether those who were released had been released on parole or were released after having served a period of in-house parole.

In response to a member's question, Missy Ortiz, a representative of the CD, informed the committee that some women who enter a corrections facility have been sentenced to incarceration for fewer than 180 days, so the CD must begin work on those inmates' parole plans immediately upon their arrival in the facility. She added that the CD has reduced the number of inmates who serve in-house parole periods.

A member asked whether the CD has requested additional funding in its budget for caseworkers. Ms. Ortiz responded that the CD requested funding for additional full-time employees. The member emphasized the importance of additional caseworkers and programming in the state's correctional facilities, and he added that it is problematic that many parolees do not have living arrangements upon their release.

Consideration of Legislation — Bills Proposed by the Administrative Office of the Courts (AOC)

Arthur W. Pepin, director, AOC, presented three pieces of legislation for the committee's consideration.

The first bill creates a "language access fund" to allow for the segregation of funding used for language access services and jury and witness fees. It passed the legislature during 2015, but was vetoed by the governor. He noted that both programs need adequate funding and should

therefore be tracked separately so that the AOC is able to identify and request necessary funding. The committee endorsed the bill without opposition.

Mr. Pepin explained that the second bill creates the "judge pro tempore fund" to hold money used to pay the costs associated with judges pro tempore, who serve under circumstances provided in the Constitution of New Mexico. He said that annual costs associated with judges pro tempore vary significantly, and if the AOC maintains a balance in the newly created nonreverting fund, it would not have to pursue supplemental funding from the legislature each year. A member emphasized the importance of judges pro tempore because of the insufficient number of judges in the state and because they are often needed in complex cases, such as water law cases. It is important that there is sufficient funding to pay those judges and not pass the cost of special masters or judges on to litigants. The committee endorsed the bill without opposition.

The third bill creates a new judgeship in the Fifth Judicial District and provides a related appropriation. Mr. Pepin explained that the AOC follows a detailed process to determine which judicial districts have the greatest needs for additional judgeships. The proposed judgeship would serve Chaves, Lea and Eddy counties. A member expressed support for the bill and added that the state also needs additional district judges and magistrate judges. The committee endorsed the bill without opposition.

Approval of Minutes

The committee approved the minutes for the September and October committee meetings.

Reorganization of the Department of Public Safety Under Senate Bill 95 (2015)

Gregory Fouratt, secretary of public safety, thanked the committee for the legislature's support of the reorganization of the Department of Public Safety (DPS) in 2015.

Pete Kassetas, chief of the New Mexico State Police and deputy secretary of the DPS, said that the department recently toured the state to discuss the reorganization and to respond to concerns about it. The department has hired an organizational consultant to assist with the reorganization and has formed reorganization working groups. The department's goal is to create a unified state police department, with a single uniform, insignia and commission. On Friday, December 4, 2015, the first class of recruits will graduate under the newly unified operation.

Chief Kassetas said that the DPS wants to identify how it can cooperate with and support other agencies in addressing crime. The department is in need of new equipment, cars and cameras. The department will continue consolidation of its dispatch centers over the next five years into three centers. He reported on the work of the five working groups, and Secretary Fouratt said that the groups were composed of junior and senior members of the departments' ranks in all three enforcement divisions.

A member commended Secretary Fouratt for his work on the reorganization, which will improve the efficiency of the department. He expressed support for the department's requests for

additional funding. Secretary Fouratt reported that with the legislature's support, the DPS has improved its marketability as an employer and is currently between sixth and seventh in the state in terms of favorable law enforcement agency employers.

A member suggested that because the department has difficulty recruiting officers, perhaps a short-term hiring incentive could be developed. Chief Kassetas noted that the inability of a retired officer to be rehired and to continue to receive a pension places the department at a disadvantage, but it helps university and tribal police departments in which retired officers often become employed. Another member said that he was informed that law enforcement officers who return to work after retirement contribute approximately \$15 million per year to the state's public employee retirement funds.

In response to a member's question, Chief Kassetas explained that the number of officers on a shift at any time varies significantly by geographic area.

Gregg Marcantel, secretary of corrections, said that the University of New Mexico is conducting a department staffing study and the results should advise on the appropriate size of the department and related funding needs. The report results will be presented to the committee.

In response to questions from a member, Chief Kassetas said that the DPS would provide a department salary schedule to the committee. He said that the top salary for a patrolman is between approximately \$52,000 and \$53,000, and he added that employees who leave the department cite low pay and inconsistent pay increases as reasons for departure. Secretary Fouratt added that many officers retire as soon as they are eligible to pursue other policing jobs that offer better pay.

Violent Crime in New Mexico — The 2014 Uniform Crime Report

Secretary Fouratt informed the committee that New Mexico was ranked the second-most-violent state in 2013, using the rates of murder, forcible rape, robbery and aggravated assaults as measurements. In 2014, the state was ranked the fourth-most-violent state in the country. Espanola was ranked the most violent city in the state, followed by Gallup and Belen. Albuquerque is in the top 5% of the most violent cities in the country.

Secretary Fouratt highlighted slide #7 in his presentation materials, titled "Violent Crime in New Mexico 2014 Uniform Crime Reporting (UCR) Data". The slide ranks the most violent cities in the state and shows each city's violent crime trend since 2012. He emphasized that the DPS needs additional resources to help improve the state's crime rates, and he added that the state could face economic development challenges without a change to its crime rates.

Chief Kassetas said that the state is also considered a dangerous place to drive, but there has been a decrease in fatal accidents from 2014 to 2015.

A member said that economic difficulties, crime rates and substance abuse are all related, and the state should dedicate more resources to treating substance abuse.

Unprocessed Rape Kits

Julianna Koob, legislative advocate for the New Mexico Coalition of Sexual Assault Programs, and Connie Monahan, coordinator, Statewide Sexual Assault Nurse Examiner (SANE), spoke to the committee about a backlog of unprocessed sexual assault examination kits and about sexual assault services in the state.

Ms. Koob expressed appreciation to the people who have been working to address the backlog of untested kits, including Senator Stewart, Representative Nate Gentry, State Auditor Tim Keller, Secretary Fouratt and John Krebsbach, Crime Laboratory director, Scientific Evidence Division, Albuquerque Police Department. She reported that the number of untested kits is approximately 5,000 to 6,000, and she added that several law enforcement agencies have not reported the number of untested kits in their possession, so that number could increase.

Ms. Koob acknowledged the courage it takes for a victim of sexual assault to report the crime and to allow a sexual assault examination to be performed. Victims of sexual assault should have access to services from rape crisis centers and other service providers, so adequate funding of those services is critical, particularly as testing of the backlogged examination kits takes place. She asked that the committee encourage its colleagues on the LFC to support a funding proposal to provide \$1 million to the Department of Health, \$1 million to \$2 million to the DPS and \$500,000 to the Human Services Department to provide for testing and services related to the backlog of untested kits.

Ms. Monahan said that the accumulation of untested kits in law enforcement agencies reveals a need for more education and training on the use of DNA evidence in the prosecution of crimes. A working group was convened and has met several times to discuss: how to build consensus on testing prioritization; how testing results will be shared with victims by advocates and law enforcement; and how other agencies will be affected by testing of the kits.

Secretary Fouratt emphasized that when the DPS requested inventories of untested kits from law enforcement agencies throughout the state, the department did not seek explanation for why the kits were untested. The department's initial concern is to determine the scope of the backlog. Approximately 31 agencies have not provided the number of untested kits in their possession, and the state auditor will pursue responses from those agencies.

State Auditor Keller acknowledged that the Office of the State Auditor's involvement in the case is aligned with the inventory-control audits the office already performs of police departments throughout the state. He said that from an accounting perspective, tracking the untested kits is an issue of inventory control. The state auditors in Kentucky and other states are also participating in similar audits to inventory untested kits in those states. The audit of untested sexual assault examination kits could become an annual process for the office.

Mr. Krebsbach said that the untested kits in the Albuquerque area date back to 1988. He noted that technology in this area changes very quickly and investigation procedures have evolved significantly since 1988, so it may be difficult to perform some tests. The working group and DNA laboratories will have to decide whether kits that are related to closed or resolved cases should still be tested because those results could help with other cases.

Ms. Koob said that while many things are uncertain, the group does know that victims who are notified of test results will need to be contacted by a trained advocate, and it is likely those victims will also need services in connection with the contact. She added that it is promising that people understand that sexual assault is a crime and that it is being reported; however, as reporting increases, the provision of resources must also increase.

In response to a question about how kits are tested, Mr. Krebsbach said that the kits include some or all of the following: hair, swabs from a person's body, saliva samples and clothing. Those items are examined to determine whether they include information that can be analyzed. The laboratories try to analyze samples from a victim's known partners, so they can determine whether that person's information was found in the test results. Information from testing is uploaded to a searchable database, and analysis is performed to determine whether the information matches any existing files in the database. He added that his laboratory will provide a report of the dates for the untested kits held in his laboratory.

A member asked how the legislature can assist, and Secretary Fouratt said that the laboratory in Albuquerque needs to be expanded and additional scientists, equipment and testing materials are needed. He said that testing a kit costs approximately \$4,000 and that more complicated kits cost more. Mr. Krebsbach agreed that his laboratory needs funding for the facility, personnel and equipment. He said he has employed five staff members since 1997 and the laboratory needs additional employees to help with an increased workload. He is seeking grant money to supplement resources. The member noted that individual members may be able to assist the laboratory with capital outlay-related needs.

In response to a question about privately testing the kits, Mr. Krebsbach said that his laboratory prefers not to have kits privately tested because it is costly and outside laboratories' systems and reports do not align with his, so his laboratory ultimately spends additional resources re-analyzing other laboratories' reports.

A member asked for an estimate of the funding required to test all of the samples from the Albuquerque area. Mr. Krebsbach said that it would cost approximately \$6 million over five years to test all of the untested sexual assault examination kits in his laboratory. Secretary Fouratt added that the DPS has requested approximately \$1.7 million to \$2.2 million to test the 2,000 kits that the DPS is responsible for testing, and he added that its testing would take 2.8 years. He confirmed that it would cost approximately \$8.5 million over five years to test all of the untested kits currently accounted for. Ms. Koob stressed that the cost would be a one-time expense of \$8 million and \$1 million in recurring funds.

A member reiterated that other states are dedicating resources to resolving this issue and thanked the state auditor for his assistance.

In response to a comment about prioritization of testing, Ms. Koob said that there are many perspectives that should be considered, and it may help to establish a task force through legislation for this purpose. She added that her priority is to ensure that victims are served by experts throughout the process.

Inmate Dairy Work Program

Linda Squire, a veterinarian and owner and operator of the Southwind Dairy, said that she contacted the Roswell Correctional Center (RCC) about 18 months ago to establish an inmate work program at her dairy. The goal of the program was to provide training, introduce inmates to a trade and allow them to save money before their release. The program benefited the dairy, which has a hard time finding dedicated agricultural workers. The 30 inmates who participated in the program were categorized as low-risk inmates, and one participant continues to work for the dairy since his release. The dairy has offered jobs to several other participants. While dairy jobs are hard work, a dedicated employee can make a good living in this stable industry.

The dairy and the RCC discontinued the program because neither party was able to develop a contract for the program that sufficiently protected the parties from potential liability arising from the program. Ms. Squire was disappointed because the program was beneficial to everyone involved.

Al Squire, also a veterinarian and owner and operator of the Southwind Dairy, expressed appreciation for several employees of the RCC who worked with the dairy to establish the work program. He explained that participants were paid \$7.50 per hour, \$5.00 of which was used to provide security, transportation and participant clothing and equipment and the rest of which was paid to participants. Participants worked during one of two six-hour shifts during the day milking cows, performing other work on the dairy and learning about care and compassion for the animals.

Bill Squire, Linda and Al's son who works for the family business, said that the training provided by the dairy was specialized and helped ensure the safety of the cows and the workers. The dairy initially delivered a presentation to the RCC and explained how the dairy business works. He said the program required a significant commitment by the dairy and participants and it was a successful program.

Bill Nesbitt, the father of one of the inmate participants, read a letter that he wrote about the value of the work release program to the committee. In the letter, he expressed his appreciation for the program and its effect on his son, Pete. After Pete started his work with the dairy, Mr. Nesbitt's son talked about the value of hard work, compassion for animals, education and his own rehabilitation. He said that the terms of Pete's probation did not allow him to continue work at the dairy, but he would like to return to work there.

A member asked Anna Martinez, acting director for the Corrections Industries Division of the CD, if the CD has found a way to allow the dairy's work program to continue. Ms. Martinez said that the department was happy with the program, but had difficulty accommodating the liabilities that arose in connection with it. She said the program would have to be run as a work-release program or as a corrections industries program, but both options present obstacles for the CD and the dairy. The general counsel for the CD said that the department would require a dairy, such as the Southwind Dairy, to be insured in the event that the dairy's negligence caused harm to inmate-participants.

In response to a question about the possibility of other programs like the Southwind Dairy program, Al Squire emphasized how beneficial dairy work programs could be, particularly because many of the state's corrections facilities are located in close proximity to dairies.

A member stressed the importance of finding a way to allow the dairy work program to continue, given the reports of its success and the CD's support of the program.

A member suggested that Mr. Carver, the Squire family and the general counsel for the CD meet after the 2016 legislative session to work on developing a solution to the problems identified by the department and the dairy.

Recess

The committee recessed at 5:51 p.m.

Tuesday, December 1

Senator Martinez called the meeting to order at 9:40 a.m., and Representative Cook welcomed the committee members and meeting attendees.

Update on Law Enforcement Assisted Diversion (LEAD)

Emily Kaltenbach, New Mexico state director, Drug Policy Alliance, discussed the progress of the LEAD program one and one-half years into its implementation. Ms. Kaltenbach reminded members of the committee that LEAD is a pre-booking diversion program that redirects people who law enforcement has probable cause to arrest for low-level drug offenses from jail and prosecution to treatment and social supports, including harm reduction and intensive case management, in an effort to treat the root causes of opiate addiction. Ms. Kaltenbach discussed how LEAD provides access to community-based supports, including housing, food, transportation, mental health and addiction services, to qualifying individuals in an effort to reduce harm to the individual and community from drug addiction.

Ms. Kaltenbach noted that Santa Fe is the second jurisdiction in the United States after Seattle to implement the LEAD model. She pointed out that over 30 jurisdictions around the country are interested in implementing LEAD and that they are looking to New Mexico for guidance on how to replicate this program.

Ms. Kaltenbach stressed that criminalizing drug use is not working and that addiction is a public health issue, not a criminal issue. She stated that the LEAD program reduces property crimes linked to drug use, recidivism and the costs of drug use to the criminal justice and public health systems, in addition to reducing harm to the individual and the community by providing participants with increased access to community-based services and intensive case management.

Bennett J. Baur, acting deputy chief, Public Defender District, North Central New Mexico, commented that LEAD is a community system with input from multiple stakeholders. He stated that a policy committee composed of representatives of the district attorney and the city agencies meets once a week to go over the logistics of the program. He noted that training of Santa Fe police officers has been an interactive process full of questions and skepticism. However, he explained that everyone involved agrees that something new needs to be attempted to address drug addiction and its consequences and that at its core, LEAD is a public safety program. He mentioned that law enforcement and the district attorney determine who is allowed to participate and they also make the decision if someone has to leave the program.

Detective Casey Salazar of the Santa Fe Police Department discussed the eligibility requirements for participation in LEAD. He stated that law enforcement considers the criminal history of the individual and whether the crime involved possession of less than three grams of opiates. He further stated that the individual must be over 18 and not involved with the exploitation of minors nor the promotion of prostitution. As to criminal history, Detective Salazar explained that the individual cannot have a history of violent crime or aggravated felonies, and he stressed that LEAD eligibility is not a substantive right.

As to the LEAD process, Detective Salazar stated that a police officer first makes the arrest and, if the LEAD requirements are met, the police officer will contact a LEAD officer, who looks at the criminal history of the individual and makes contact with the district attorney to make a final eligibility determination. He stated that if the individual does not qualify for LEAD, the individual will go through the criminal justice system as usual. He stated that if the individual is eligible for LEAD, the individual will be referred to a case manager and must report to the case manager within seven days to do a full intake assessment. He noted that if the individual does the full intake assessment, the charges will be dropped; however, if within seven days the individual does not meet with the case manager for a full intake assessment, the district attorney may proceed to file charges. He added that the officers and case managers meet twice a month as a case coordinating group to discuss the progress of the individual and to learn about the services being provided.

Detective Salazar further noted that an individual could also participate in LEAD through a social contact referral. He explained that if someone is known as an opiate addict, an officer does not have to make an arrest to put the person in the LEAD program. He pointed out that the social contact referral component allows officers to be proactive, to prevent criminal activity and to help deal with addiction before arrest happens. He said that since April 2014, 51 clients have been referred to LEAD, 12 of whom were deemed ineligible due to incarceration, probation,

pending felony cases in other jurisdictions, violent behavior or declining to participate; there are 39 active clients, 18 of whom were social contact referrals.

Michael DeBernardi, director of behavioral health services, The Life Link, reported to the committee on the demographics of LEAD clients and the services they receive. He described clients as being a young population composed of mostly females. He further stated that most clients are homeless or unemployed and have substance use or mental health disorders. Mr. DeBernardi explained that The Life Link coordinates care and services for participants, with the foundation being harm reduction, as opposed to an abstinence-only approach. He said that through intensive case management and daily contact, The Life Link is a one-stop shop for clients to access other services, including basic needs such as housing, food and transportation, child care and opiate replacement therapy. He stated that all clients are engaged in case management, with a majority additionally engaged in coordinated care services and individual or family therapy.

Ms. Kaltenbach reported that from Seattle's LEAD evaluation results, participants were 58% less likely to go back to criminal justice, had 1.4 fewer jail bookings and spent 39 fewer days in jail in comparison to the control group of individuals who did not participate in LEAD. She also stated that LEAD participants showed cost reductions to the criminal justice and legal systems, whereas control group nonparticipants showed cost increases. She indicated that an evaluation plan for Santa Fe LEAD was being developed.

Angela "Spence" Pacheco, district attorney, First Judicial District, told the committee that there is a serious heroin addiction problem in the United States and that law enforcement is struggling with drug cartels and associated crimes. She said that it is a matter of hope about how the issue is perceived. She emphasized that heroin is a health issue, not a crime issue. She offered that society criminalizes the behavior, which leads to more people in prison and forced treatment, which, she was of the opinion, does not work. She stated that LEAD does not force anyone into sobriety, but rather helps the individual to stabilize and make better choices, leading to cost savings for government. She offered that the public cannot stop addiction and needs to reframe the issue of addiction to deal with it in ways other than putting someone in jail. She remarked that on the national level, Santa Fe is in the spotlight and that the country is looking toward Santa Fe to figure out how to deal with the issue. She informed the committee that Senator Nancy Rodriguez is requesting \$200,000 to support the LEAD program and asked the committee to endorse the program for funding.

Several members of the committee expressed support for the program and concept and stated that they would support continued funding of LEAD.

A member of the committee disagreed with Ms. Pacheco about the efficacy of forced sobriety, stating that drug courts are successful because they offer the choice of sobriety or jail.

Members of the committee inquired as to what had happened to Senator Rodriguez's 2015 appropriation request for LEAD, and Ms. Kaltenbach answered that the legislation for a two-year appropriation was line-item-vetoed by the governor, that Senator Rodriguez is reintroducing the bill and that it has been endorsed by the Legislative Health and Human Services Committee. Ms. Pacheco opined that the governor vetoed Senator Rodriguez's bill because the governor erroneously believed that there was a duplication of services because all district attorneys have in-house diversion programs. Mr. Baur stated that LEAD is not a replacement for drug court, which works well with a certain population that is not the LEAD population. He said that the point of LEAD is to help people who are nonfunctioning to build them up and get them what they need to function in society, which leads to hope and motivation to move forward and to get them to care about their lives.

In response to committee members' concerns about relying on the numbers provided regarding the efficacy of the program, Ms. Kaltenbach clarified that the statistics provided were based on the experience of Seattle over the past few years. She agreed with a committee member that, because the program in Santa Fe is new, there have not been enough years nor clients to do a quality study and that there will not be an evaluation from Santa Fe for another couple of years, as five to 10 years is needed to see a true benefit.

A member of the committee inquired into the intake assessment process. Mr. DeBernardi explained that the process is twofold: first, there is a LEAD assessment to ensure eligibility for the program; and second, a clinical assessment by a licensed professional clinical counselor, including a two-hour clinical interview, a taking of the client's full history and utilization of screening tools. Mr. DeBernardi explained that assessment is an ongoing process and clients will be monitored for diagnoses and treatment throughout the program.

In response to question by a committee member, Detective Salazar stated that someone who drops out of LEAD can choose to participate again as long as the individual is still qualified.

Members of the committee questioned why LEAD is only focused on opiate addiction and residential property crimes. Members of the committee expressed concern that the same diversion opportunity was not available to individuals with, for example, a history of alcohol abuse or violent crime, and that services afforded by participation in LEAD could be helpful for a broader category of community concerns. Ms. Pacheco responded that development of the program was in response to the city of Santa Fe dealing with a serious burglary rate, and money for the program was conditioned on addressing Santa Fe's specific concerns.

A member of the committee asked how the LEAD model could be developed in a larger community. Detective Salazar suggested that it is important for the community to develop trainings in coordination with law enforcement and get the officers to support the program. He stated that Seattle is a good model for a larger community, where the street and bike teams are at the forefront of making referrals. He also suggested that law enforcement look to its proactive

officers and assign them as a core team. However, he cautioned that departments should not be too selective because it is important to have broad support from the street-level officers.

Members of the committee wondered how much money the state has saved by implementation of LEAD and how much it costs per participant. Ms. Kaltenbach responded that a cost-benefit analysis was done before the program started but that the program has not been in existence long enough to know for sure. She said that she originally believed the program would cost about \$10,000 per participant, but the real cost is variable around \$7,000 per participant, depending on the participant's specific issues, which may include homelessness or other chronic problems. She stated that many of the participants are Medicaid-eligible and able to get services through that source.

A member of the committee questioned whether participation in the program was voluntary. Detective Salazar clarified that one aspect of the program was diversion from arrest and jail and that participation was dependent on an eligible individual following up to do a full intake assessment seven days after the initial intake; otherwise, arrest was possible. He said the social contact aspect of the program was absolutely voluntary.

In response to a committee member's concerns about participants continuing to use drugs while participating in the program, Mr. DeBernardi stated that participants are tested for drugs once per week, but that testing was used as motivator for services instead of as a punitive measure.

A member of the committee raised the concern that more lives could be saved from overdose if people understood the effectiveness of naloxone and had access to it. Panel members agreed that public education about naloxone and its efficacy could be increased in addition to barriers being eliminated to increased access.

In response to a question about the lack of detox facilities in New Mexico and the relationship to LEAD, Mr. Baur responded that LEAD is building better relationships between law enforcement and the treatment field so as to have options for people who need that type of assistance.

Report on Housing and Clinical Service Options for Individuals with Serious Mental Illness in Custody of County Facilities

Senator Rue thanked the committee for its role last session in passing Senate Joint Memorial 4, which established a task force to study and make recommendations for clinically appropriate housing options for individuals with serious mental illness who are in custody in county detention facilities. He stated that the consequence of people with severe mental issues committing crimes is a public health and safety issue, and in order to address the public safety issues, society needs to find a way to help those individuals who cannot help themselves. He then introduced the members of the task force.

Grace Philips, general counsel, New Mexico Association of Counties (NMAC), addressed the members of the committee, stating that there are 27 detention facilities throughout the state and, on a fiscal level, one-third of a county's budget goes to detention operations. She informed the committee that on a human level, New Mexico is only one of two states in the nation that has more people in jail than prison, citing that in 2013, there were twice as many women and 1,000 more men in county jails than in prisons. Although there were 100,000 county jail bookings in New Mexico last year, she informed the committee that three-fourths of those booked are out within 14 days, and for felonies, 147 days. However, she stated, if mental illness is a factor, the length of stay increases by at least a month, with a psychotic diagnosis increasing the length of stay by 121 days. Additionally, she informed the committee that when competency is challenged, the median length of stay is increased by 11 months if the individual is found competent and 18 months if the individual is found incompetent.

She noted that there are fewer than 200 beds in the New Mexico Behavioral Health Institute at Las Vegas, and the state has a total of 491 licensed psychiatric beds. Using data from the Bernalillo County Metropolitan Detention Center as a guide, she stated that 35% of the detention center population is on psychotropic medications, which suggests that there are over 2,500 individuals with serious mental issues in jail. She advised that these statistics do not mean that all individuals would be eligible for hospital care but that it is worth noting to understand the scope of the problem.

In coming up with its recommendations, Ms. Philips stated that the task force referred to studies by the New Mexico Sentencing Commission and took informal surveys of detention administrators to identify the individuals who are most challenging to manage and do not belong in jail. She explained that from the surveys and data, the task force tried to define the characteristics of the population concerned. She summarized that many individuals were in the pretrial stage, charged with nonviolent offenses, and two-thirds have had their competency challenged.

The panel then reviewed with the committee the six recommendations of the task force listed in the handout titled "Senate Joint Memorial 4 Task Force Recommendations, December 2015". Recommendations include:

- identify the population and assess its risks and needs;
- inventory available resources and gaps;
- provide for release from detention supported by wraparound services;
- provide for housing in conjunction with other services;
- create secure clinical facilities to serve "gap" populations; and
- educate stakeholders regarding benefits of supportive treatment for individuals living with serious mental illness and available tools for release.

Chris Tokarski, executive director, Mental Health Resources, Inc., reviewed the task force's first recommendation to identify the population and assess its risks. He asserted that the

assessment process across the state is very diverse and that recommendations are needed to fit the various counties, including frontier and rural areas. He stated that detention facilities have a growing population of the mentally ill, and assessments at the facilities usually determine prescribed medications and whether a mental health issue exists, but not treatment needs. He offered that assessments need to identify substance abuse, housing, medical, community support, financial and mental health issues to allow detention centers to develop release plans, treatment plans and an accountability process with a focus on reducing, but not necessarily eliminating, the number of individuals with mental health challenges being detained.

Kathleen Sabo, attorney, AOC, reviewed the second recommendation and summarized that an accounting of services on a community-by-community basis is needed to determine what is available to the population post release and what is lacking.

Ms. Pacheco reviewed the third recommendation to provide for release from detention supported by wraparound services. She summarized that because the mental health condition is usually tied to the crime, the individual should not be treated as a criminal; however, without comprehensive services, people with serious mental health issues will continue to linger in jail facilities.

Hank Hughes, executive director, New Mexico Coalition to End Homelessness, reviewed the fourth recommendation to provide for housing in conjunction with other services. He stated that permanent supportive housing models could show significant financial savings for jails and hospitals and that there is some federal funding available. He said that the New Mexico Linkages program has over 100 beds, but that more are needed. He also mentioned that individuals could participate in a program to receive a housing voucher for 70% of housing costs, which automatically improves mental health and also connects a client to directed, individualized services. He explained that for people who need more assistance with taking their medications or support until they are able to manage on their own, group homes are a viable option. He offered that there is a role for the legislature to provide more money for state-funded linkages and more structured housing.

Matthew Elwell, director, Luna County Detention Facility, and chair, Detention Administrators Affiliate, NMAC, discussed the fifth recommendation, to create secure clinical facilities to serve "gap" populations. He stated that New Mexico needs therapeutic, secure facilities spread throughout the state to help individuals who have essentially hit rock bottom. He explained that these people have possibly not been on their medications for years, are self-medicating or do not have a diagnosis of their mental health condition. He suggested that a facility is needed to help get them back on medications and get stable, so that they can either be housed with the general population or kept in a therapeutic facility until adjudicated. He pointed out that there are not a lot of models on this countrywide and that New Mexico would be on the cutting edge in creating secure clinical facilities. He suggested that the facilities should be of a detention administrator classification, but they could also have a community component to them, for example, outpatient or vocational facilities. He proposed that it was important to ask how the

facility can serve the community as well as corrections and that providing dual services may help to keep costs down as well as generate good outcomes for the community. He indicated that creation of secure clinical facilities would potentially require changing some laws (for example, building codes) and making determinations about the proper oversight authority (for example, health, corrections or regional authority).

Micah Pearson, vice president, National Alliance on Mental Illness, Dona Ana County, discussed the last recommendation, to educate stakeholders regarding benefits of supportive treatment for individuals living with serious mental illness and available tools for release. Mr. Pearson, who is bipolar, stated that education around mental illness is necessary for all to reduce the stigma in society. He summarized that people with mental illnesses are usually the victims of crime and education will minimize interactions with law enforcement.

Members of the committee asked questions about and discussed:

- the lack of uniformity of assessment across counties;
- federal Health Insurance Portability and Accountability Act of 1996 implications for law enforcement and referrals to mental health services;
- how to provide services to individuals who are homeless;
- housing options after incarceration;
- the cost-effectiveness of providing treatment instead of incarceration;
- the potential necessity of redefining the rules and regulations regarding secure facilities to serve both law enforcement and mental health treatment purposes;
- the New Mexico Behavioral Health Institute as a secure mental health treatment facility; and
- Medicaid eligibility of individuals in detention.

A committee member asked the panel to provide a funding request by January 2016 to implement the treatment recommendations discussed.

Progress Made Toward Alleviating Segregated Housing — An Update

Mr. Elwell informed the committee that the special management policy was implemented in 29 separately run facilities statewide. He advised the committee that the past year was spent looking at which facilities had implemented the policy, if the policy was being followed as drafted and what tools and support facilities need to get staffing up to speed for implementation. He summarized that the policy mitigates liability and creates cohesion in special management housing. He added that every center had been visited and that data are being gathered now.

He reported that in Luna County, when the process was started three years ago, 15% of the population was in special management, but today only 2% to 4% percent are. He explained that although the population has grown, fewer people need to be managed. He said that of those who are involuntarily in segregation, more of them are now in small general population areas and double cells are being used instead of single cells for disciplinary measures. He stated that

individuals are getting two to 10 hours a day out of confinement, in addition to access to mental health treatment, anger management, self-help, anxiety support groups and resources for developing coping skills while incarcerated. He told the committee that seriously ill individuals, once stabilized, are placed in a peer-mentoring program and are allowed to mingle with the general population, although there has been little success with seriously mentally ill individuals living in the general population for more than three days.

Mr. Elwell concluded by stating that there were more developments to come, and he encouraged members of the committee to visit local jails and see the various models in the pilot stage.

Consideration of Legislation — Uniform Trust Decanting Act, Rule Against Perpetuities and Uniform Powers of Appointment Act — Combined Legislation

John W. Anderson, executive vice president, New Mexico Bankers Association, introduced Jack Burton, attorney and commissioner, Uniform Law Commission, and Patrick Schaefer, senior vice president, New Mexico Bank and Trust.

Mr. Schaefer reviewed his handout, "4th Annual Dynasty Trust State Rankings Chart", and explained that the proposed legislation could put New Mexico in the top 10 of the rankings, which would be a more attractive position to compete with other states to attract wealthy people to establish residency in New Mexico. Wealthy people who establish residency in the state because of favorable treatment of estate planning and management services would provide economic benefits to professions such as legal, tax accounting and real estate management services, as well as increasing bank deposits. He noted that some states have combined the proposed measures with no state personal income tax to attract wealth to their states.

Mr. Burton explained that the proposed legislation, available at item (11), "Uniform Trust Acts", combines the provisions of Senate Bill (SB) 60 (2015), which passed the senate and died in the house of representatives, and adds the Uniform Trust Decanting Act and amends the statutory rule against perpetuities in regard to assets held in a trust.

Committee members expressed concern about including the provisions of SB 60 with the amendments to the statutory rule against perpetuities and the addition of the Uniform Trust Decanting Act. One member wondered whether the inclusion of all of these provisions could be considered "logrolling"; another observed that a bill to amend the statutory rule against perpetuities had been introduced in the past eight sessions and had never passed; and another commented that passing on wealth is not always a good idea and offered the San Francisco 49ers as an example. A committee member asked if there would be a message for the bill; Mr. Burton said the group is working on it. A committee member commented that the legislature will need to consider if it wants New Mexico to be a place that encourages people to come to shelter assets from children, spouses and creditors, and noted that the states on the top-10 list are not necessarily known as models of economic growth. Mr. Schaefer replied that being on the list is known to bring in wealth that residents can benefit from assisting to manage. Mr. Burton added

that some uniform laws have non-uniform options, and the Uniform Law Commission does not favor provisions that allow protection of assets from creditors, spouses and children. He said that the states on the list from Wyoming down do not allow that protection.

In the absence of a motion to endorse the proposed legislation, Mr. Anderson said in closing that the proponents are trying to provide an impetus for wealthy people to have their assets managed in New Mexico, and the proposed legislation would jump-start the economy in New Mexico at no cost to the state.

Human Trafficking

Susan Loubet, chair, Human Trafficking Task Force, referring to her handout at item (12), "Human Trafficking Task Force Update", provided the committee with updates on funding the Crime Victims Reparation Commission, legal services and ongoing FBI investigations of human trafficking. She then detailed the short-term and long-term needs of victims, following her handouts at item (12), "Victim Needs Short Term" and "Victim Needs Long Term". She explained that crisis housing for human trafficking victims should not be provided in domestic violence shelters because it increases risk from traffickers to both victims and other residents. She also informed the committee that a two-year study in Washington state identified the most important long-term need of victims as education and job training, especially for victims who are minors because often minors do not realize that what is happening to them is against the law and there are protections available to them. In answer to a question from a committee member, Ms. Loubet said that not all victims are female and not all victims are forced to work in the sex trade. Some traffickers specialize in workers in other industries such as construction and domestic services, and in some areas there are more specialized industries, such as in Ruidoso where horse racing is a big industry that draws participants temporarily from many different places.

Problems with Obtaining Mental Health Evaluations

Diana A. Martwick, district attorney, Twelfth Judicial District, spoke on behalf of the New Mexico District Attorneys Association (NMDAA) to inform the committee of the recent difficulties that prosecutors have encountered with the process to obtain competency-mental health evaluations. She said the practice statewide has been to send defendants whose competency is in question to the Behavioral Health Institute at Las Vegas for evaluation and treatment to competency, if necessary. In the past six months, the administration of the hospital has stopped performing evaluations and in numerous instances has informed prosecutors that the hospital will only treat but not evaluate, even though it is funded for both functions. The administration has not provided any explanation for this change in policy, and the district attorneys are concerned because their budgets do not include funding for private competency evaluations. Ms. Martwick observed that the Public Defender Department has money in its budget for experts, but the district attorneys do not because they are supposed to use the institute. Members of the committee expressed concern about the new policy.

Truancy as a Stand-Alone Offense

Ms. Martwick expressed concern about older minors who are truant from school after being dropped off by their parents. She said that parents can be charged if their child misses 10 days of school or more, but all of the responsibility is on the parents and none on the students. She said that in a situation where the parent is taking the student to school and the student leaves the school after the parent has left, the parent should not be held responsible; rather, the student should have to be accountable. Ms. Martwick said the district attorneys would like to see an alternative sentencing program to address truancy in older minors. A committee member asked about school responses to truant students, and Ms. Martwick responded that the school's response depends on the superintendent and so this varies widely across the state. A committee member recalled that information presented in other committee meetings indicated that evidence shows that one night spent in a detention center increases the chances of the juvenile not graduating high school by 50% and opined that a referral to a court often creates more problems for students and their families than it solves. Another committee member observed that it will require huge resources to find, arrest and place truants and that taking truants to court does not seem like a solution to the issue. A committee member suggested reaching out to the Legislative Education Study Committee. A committee member asked whether legislation is being contemplated, and Ms. Martwick confirmed that it is but has not been drafted yet. The committee member noted that committees do not endorse concepts, only actual proposed legislation, and thanked Ms. Martwick for informing the committee of the NMDAA's intention.

Homeowner Association Act — Two Perspectives

Senator Stewart provided a brief overview of legislative work regarding homeowner associations (HOAs). She said many legislators had received complaints over the years about various HOAs, particularly about governance issues such as notice of meetings, meeting attendance, voting rights and financial management transparency. In the absence of statutory guidance, conflicts regarding HOAs often end up in court, where they are usually decided based on contract law. After several years of work, a bill was introduced in 2010 and passed in one chamber but died in a last-minute filibuster in the other chamber. In 2013, an outline of a regulatory scheme for HOAs was passed, but some issues and unintended consequences have emerged since then that require remediation. One of the difficulties is that the Homeowner Association Act applies more to new HOAs than to existing HOAs. HOA issues are different from realtor and homeowner points of view, so she arranged two panels to address the issues.

Panel 1 — The Homeowner Association Act — Problems and Concerns

Teri Buhl, vice president, Santa Fe Area Home Builders Association, informed the committee that she lives in Rancho Viejo in Santa Fe, a community that has an HOA, and that she served as a member of the board of the HOA for a period of time. During her term, she saw other board members circumvent the bylaws, call board meetings without notifying dissenting board members and call the sheriff on homeowners who attended meetings and asked questions about association finances and about an outstanding audit with questions about missing money. She said that current state law allows a board to use HOA fees to pay a lawyer to stifle dissident homeowners, but dissident homeowners have to pay their own costs to challenge the board; there

is no recourse for homeowners. She asked for legislation that gives the AGO authority to oversee HOAs and a mechanism to hold boards accountable for fiscal and policy management.

Tom K. Pollard reviewed his handout at item (15), "Testimony of Tom K. Pollard, PhD". He asked for legislation modeled on Maine and Connecticut statutes regarding private road maintenance.

Tego Venturi, Venturi Team Realtors, spoke on behalf of the Greater Albuquerque Association of Realtors. He said that 3,500 of 11,000 real estate transactions in Albuquerque last year involved HOAs and opined that, in general, HOAs do a good job keeping property values up. Mr. Venturi told the committee that since passage of the 2013 legislation, buyers are getting more information about HOAs than ever before, but sellers' costs have increased, in some cases substantially, because of HOA charges to provide information required to be disclosed. He said much of the information is standard, but HOAs are charging the same fees for providing the same information, sometimes several times during the course of marketing and eventual sale of a property. What happens is a sale contract is signed, the seller requests the required disclosures from the HOA, the HOA provides the disclosures and charges a fee, and then for some reason the sale falls through, and the same thing happens with the next potential buyer: the information has not changed, but the HOA charges again for the same information because the disclosure is only good for 30 days. He noted that the seller had been paying monthly HOA fees during the term of ownership for the HOA to, among other things, maintain the records required to be disclosed at sale, and he expressed the opinion that it is unfair to charge the seller again for providing the information that had already been paid for through HOA fees. He suggested: (1) creating an oversight authority for HOAs; (2) creating a statewide database showing HOA fees for disclosure statements; and (3) requiring HOAs to disclose all potential fees at the closing.

Julie Yuska Buckalew, vice president and escrow operations manager, Stewart Title, commented that the title insurance industry was not included in bill drafting and subsequent legislative discussions. She commended the intent of the bill, but she said in practice it is proving to penalize sellers and not regulate HOAs. She also said the disclosure statements need more consistency. She suggested creating uniform documents and fee schedules and providing for collection of disclosure statement preparation fees at closing. She observed that paying the disclosure fees, especially multiple times, before they have received money from the sale can be a hardship for sellers.

Panel 2 — The Homeowner Association Act — View from the Industry

Tom Simon, professional community association manager, WestGate Properties, LLC, introduced the panel.

John Krueger, vice president, government affairs, Associa, informed the committee that the industry estimates that there are approximately 2,000 HOAs representing 260,000 residents and that property values in communities with HOAs are approximately 5% to 7% higher than in non-HOA communities. Only about 40% of HOAs are professionally managed; the rest are run

by volunteers. Mr. Kreuger stated that Associa had supported the Homeowner Association Act because the intent is to make the purchase of a home a fully informed transaction and said the act has resulted in fewer questions and disputes at closings and after. He remarked that it is important to have the information at least seven days before closing to allow time to properly review it. He questioned why the legislature would get involved in setting a cap on a service that has nothing to do with the cost of the service. He informed the committee that professional management companies make their money on ancillary fees like disclosure reports and that management fees are a net loss.

Mr. Simon concurred with Mr. Kreuger. Mr. Simon agreed that HOA boards need oversight, but averred that HOA management companies do not need the same oversight. He said the management company's job is to educate the board on how to manage the HOA and to educate new members of the community prior to purchasing about how to be a compliant homeowner. He further opined that HOA boards should not be required to have open meetings.

Rey Post, Sotheby's International Realty, focused his remarks on the relationship between realtors and HOAs. He said that transferring property has become much more complicated since the financial meltdown and there are new federal mandates for lenders regarding home sales; the Homeowners Association Act just adds more bureaucracy. He said that in his experience, HOAs that are self-managed are a nightmare to deal with and that professionally managed HOAs are much better.

Javier Delgado, attorney, Carpenter, Hazlewood, Delgado and Bolen, PLC, in Arizona, informed the committee that he has been representing HOAs since 2002 and cautioned the committee that fees charged for disclosure statements should cover the risk that the information provided is incorrect. He remarked that in his opinion, good governance cannot be legislated. He noted that HOA boards are elected, and he suggested that a homeowner who does not like the way the board operates should get elected to the board or not reelect board members. He further opined that the Nevada ombudsman process to resolve disputes between HOAs and homeowners is too slow and adds to the problem. In his opinion, nonprofessionally managed HOAs are the problem.

A committee member noted that there is a considerable range of fees and asked how fees are set. Mr. Kreuger said his company has a management fee and a fee schedule for ancillary services. Mr. Venturi said he has seen disclosure statement fees range from \$0 to \$400, transfer fees from \$0 to \$200 and "rush" fees of up to \$100. Mr. Kreuger noted that some HOAs also require inspection fees to complete a disclosure statement.

A committee member asked why the HOA could not publish information that is not particular to a specific property on a website instead of re-creating it for every individual sale. Mr. Simon said that the Nonprofit Corporation Act also impacts the issue; the act addresses some governance issues. He continued that most management companies have information packages

and that producing the packages requires regular updates. Mr. Kreuger added that fees are negotiated with the board when the management company is hired.

A committee member stated that more than half of the items on the disclosure statement apply to all properties in the community, so they do not change from one sale to the next. The member added that some realtors have requested the information now required to be included in the disclosure statement and have been given it by the HOA at no charge, but after passage of the Homeowner Association Act, HOAs and management companies have begun charging for the same information. Passage of the Homeowner Association Act spurred management companies and HOAs to create a very profitable new income stream without oversight.

Senator Stewart thanked the committee and panels for the discussion and said she hoped the industry would continue to work on the issue in the coming year so that a bill could be introduced to address the issues discussed today.

Public Comment

Diana Crowson addressed the issue of solitary confinement of incarcerated persons. She noted that in 1890, the United States Supreme Court said that solitary confinement is cruel and unusual punishment, and she added that evidence shows that solitary confinement can cause psychotic changes and increases recidivism rates for prisoners upon their eventual release. Referring to the Southern New Mexico Correctional Facility in Las Cruces, she said that 21 months ago, the entire facility was placed in lockdown, which is essentially solitary confinement for all prisoners, because of a murder in one area and allegations of gang membership, and that the lockdown has not been lifted since, despite court orders to do so. The committee chair asked Mr. Carver to follow up with the facility and provide an update to the committee.

Greg Cohelo, a 15-year resident of Eldorado south of Santa Fe and a two-year member of the HOA board, noted that the Homeowner Association Act does not have a sunset clause and suggested adding language regarding governance.

Eduardo, a resident of Eldorado, encouraged the committee to publish notice of its meetings more widely so all homeowners would have a chance to appear and the committee would not just hear from industry representatives.

Chris Mechels referred to his handout suggesting reforms in the DPS and the AGO and requested that the legislature withhold funds from those agencies until the reforms are achieved.

Recess

The committee recessed at 5:43 p.m.

Wednesday, December 2

Senator Martinez called the meeting to order at 9:31 a.m.

Public Comment on Policing Reform

Margarita Sanchez discussed various proposals for policing reform in the state. The proposals included ending "broken windows" policing, increasing community oversight of police, limiting the police use of force, having independent investigations and prosecutions of police misconduct, having police forces better reflect the communities they serve, increasing use of body and dashboard cameras and similar recording devices by the police and changing and increasing police training.

Consideration of Legislation — A Bill Requiring the Corrections Department to Submit a List of Inmates Who Are Eligible, or Who May Become Eligible, for Medical or Geriatric Parole to the Parole Board

Senator O'Neill presented the bill on geriatric parole to the committee, noting that it was one of the package of bills proposed by the Criminal Justice Reform Subcommittee (CJRS) in 2014. After discussion of the proposed legislation, upon a motion by Senator Rue, seconded by Representative Alcon, the committee endorsed the bill with no objections.

Consideration of Legislation — A Bill Requiring That a Person Assigned to an Intensive Supervision Program Also Be Enrolled in a Behavioral Health Program; Requiring Incorporation of Evidence-Based Behavioral Health Programs into Community Corrections; Requiring the Corrections Department to Use a Validated Risk and Needs Assessment

Senator O'Neill and Charles Sallee, deputy director, LFC, presented the bill on evidence-based programming and validated risk and needs assessments, noting that it was also one of the package of bills proposed by the CJRS in 2014. After discussion of the proposed legislation, upon a motion by Senator McSorley, seconded by Representative Maestas, the committee endorsed the bill with no objections.

Consideration of Legislation — A Bill Allowing for the Use of Civil Compromise

Representative Little and Jorge Alvarado, chief public defender, presented a bill to allow the use of civil compromise as an alternative to criminal prosecution, modeled on California law. After discussion of the proposed legislation, upon a motion by Senator McSorley, seconded by Representative Rehm, the committee endorsed the bill, with Senators Cervantes, Martinez and Rue voting against it.

Consideration of Legislation — A Bill to Expand the Scope of the Three-Strikes Statute

Representative Pacheco and Mr. Carver presented a bill to expand the scope of the state's three-strikes statute. After vigorous discussion of the proposed legislation, upon a motion by Senator Rue, seconded by Representative Rehm, the committee, after a roll call vote, endorsed the bill, with an amendment to add an applicability section, on a 9 to 4 vote. Representatives Cook, Alcon, Dines, Little, Maestas, Nunez and Rehm and Senators Cervantes and Rue voted in favor of the bill. Senator Martinez, Representative Chasey and Senators Lopez and McSorley voted against it.

Consideration of Legislation — An Appropriation to DPS to Analyze DNA Evidence Kits

Senator McSorley presented an appropriation added to the agenda to provide funds to the DPS to assist it clearing the backlog of DNA evidence kits. After discussion of the proposed legislation, upon a motion by Senator McSorley, seconded by Representative Alcon, the committee endorsed the appropriation with no objections.

Consideration of Legislation — An Appropriation to the Department of Health for Sexual Assault and Rape Crisis Center Services

Senator McSorley presented a second appropriation added to the agenda to provide funds to the Department of Health to provide sexual assault and rape crisis center services. After discussion of the proposed legislation, upon a motion by Senator Martinez, seconded by Representative Nunez, the committee endorsed the appropriation with no objections.

Consideration of Legislation — A Bill to Allow the New Mexico Department of Agriculture to Adopt Rules for Research on Industrial Hemp

Senator McSorley presented a bill concerning research on industrial hemp. After discussion of the proposed legislation, upon a motion by Senator Martinez, seconded by Representative Nunez, the committee endorsed the bill with no objections.

Consideration of Legislation — A Bill to Expand the Scope of the Three-Strikes Statute

Representative Rehm presented a bill to expand the scope of the state's three-strikes statute. After discussion of the proposed legislation, upon a motion by Representative Dines, seconded by Representative Nunez, the committee endorsed the bill, with Senators Martinez, Lopez and McSorley and Representative Chasey voting against it.

Consideration of Legislation — A Bill Providing for a Distribution from the Law Enforcement Protection Fund to Certified Regional Law Enforcement Training Facilities and the New Mexico Law Enforcement Academy

Representative Ruiloba; Gilbert Najar, director, Western New Mexico University Police Academy; Lt. Broderick Sharp, academy commander of training, Bernalillo County Sheriff's Department Regional Training Academy; and Sgt. Pat Flores, director, San Juan County Criminal Justice Authority, presented a bill to expand the distributions made from the Law Enforcement Protection Fund. After discussion of the proposed legislation, upon a motion by Representative Rehm, seconded by Representative Little, the committee endorsed the bill with no objections.

Consideration of Legislation — Bills Proposed by the Children, Youth and Families Department (CYFD)

Monique Jacobson, secretary of children, youth and families, made opening comments on the bills proposed by the Children, Youth and Families Department (CYFD), noting that all of the pieces of legislation before the committee were cleared by the house of representatives in the prior legislative session with strong bipartisan support.

Battery on a CYFD Worker (Sponsored by Representative Gallegos)

Secretary Jacobson; Lisa Madrid-Schleicher, Protective Services Division, CYFD; and Amanda Romero, Office of General Counsel, CYFD, presented a bill proposing the creation of the crimes of assault and battery on a CYFD worker. After discussion of the proposed legislation, upon a motion by Representative Rehm, seconded by Representative Maestas, the committee endorsed the bill, with no objections.

Absconders (Sponsored by Representative Rehm)

Representative Rehm and Nick Costales, deputy director for juvenile justice services, CYFD, presented a bill making certain changes to the Delinquency Act, principally concerning children who abscond from supervision. After discussion of the proposed legislation, upon a motion by Representative Nunez, seconded by Representative Little, the committee endorsed the bill, with Senator McSorley and Representative Chasey voting against it.

Intentional Abuse Increased Penalties (Sponsored by Representative Conrad James)

Representative James and Jennifer Saavedra, deputy secretary, CYFD, presented a bill to increase the penalty for the intentional abuse of a child 12 to 18 years of age that results in the death of a child. After discussion of the proposed legislation, Representative Rehm made a motion, seconded by Representative Dines, to endorse the bill. Senator McSorley challenged the quorum. As there was not a quorum of voting members present, the committee was not able to vote on endorsement of the proposed legislation.

Negligent and Intentional Child Abuse (Sponsored by Representative James)

Representative James and Michael Heitz, general counsel, CYFD, presented a bill to distinguish between the penalties for negligent versus intentional abuse of a child. There was discussion of the proposed legislation. As a quorum of voting members had not been reestablished, the committee was not able to vote on endorsement of the proposed legislation.

Criminal Images to Children (Sponsored by Representative Kelly K. Fajardo)

Representative Fajardo and Mr. Heitz presented a bill to provide for penalties for electronic communication of images of any person's intimate parts to a child. There was discussion of the proposed legislation. As a quorum of voting members had not been reestablished, the committee was not able to vote on endorsement of the proposed legislation.

Consideration of Legislation — A Bill to Add Law Enforcement Officers to the Hate Crimes Act

Representative Gentry presented a bill to add law enforcement officers to the Hate Crimes Act. After discussion of the proposed legislation, Representative Little made a motion, seconded by Representative Rehm, to endorse the bill. As a quorum of voting members had not been reestablished, the committee was not able to vote on endorsement of the proposed legislation.

Consideration of Legislation — A Bill Establishing the Crime of Driving While Intoxicated with a Minor in the Vehicle

Although on the agenda, this bill was not presented to the committee.

Consideration of Legislation — A Bill to Remove the Age Distinction in Cases of Intentional Abuse of a Child Resulting in Death

Although on the agenda, this bill was not presented to the committee.

Public Comment

Mr. Mechels raised concerns with the membership of the Law Enforcement Academy Board and spoke against the bill concerning additional disbursements from the Law Enforcement Protection Fund.

Ms. Sanchez spoke out against the committee considering a large number of bills that were a return to being tough on crime instead of being smart on crime.

Adjournment

There being no further business before the committee, the sixth and final meeting of the CCJ for the 2015 interim adjourned at 4:08 p.m.